

ESTTA Tracking number: **ESTTA569408**

Filing date: **11/06/2013**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Owens & Minor, Inc.
Granted to Date of previous extension	11/06/2013
Address	9120 Lockwood Boulevard Mechanicsville, VA 23116 UNITED STATES
Attorney information	Virginia R. Richard Winston & Strawn LLP 200 Park Avenue New York, NY 10166 UNITED STATES trademarkny@winston.com Phone:212 294-6700

Applicant Information

Application No	85699218	Publication date	07/09/2013
Opposition Filing Date	11/06/2013	Opposition Period Ends	11/06/2013
Applicant	Beijing Choice Electronic Technology Co., Ltd. Bailangyuan Building B, Rm. 1127-1128 Beijing, CNX 100039 CNX		

Goods/Services Affected by Opposition

Class 009. First Use: 0 First Use In Commerce: 0

All goods and services in the class are opposed, namely: Multifunctional electronic devices not for medical use, namely, devices incorporating microprocessors, digital displays, and accelerometers for displaying, measuring, and uploading information to the Internet regarding time, date, body and heart rates, global positioning, speed, steps taken, calories burned, and navigational information for purposes of tracking physical exercise and geographic location; fitness equipment, namely, scales and personal weighing scales; Computer software for wireless data communication for receiving, processing, transmitting and displaying information relating to fitness, body fat, body mass index, blood oxygen saturation, blood pressure, heart rate, electrocardiographic data, and body temperature; computer software for managing information regarding tracking, compliance and motivation with a health and fitness program; computer hardware and software system for tracking people, objects and pets using GPS data on a device on the tracked people, objects and pets; computer hardware and software, for use with medical patient monitoring equipment, for receiving, processing, transmitting and displaying data; computer software for controlling and managing patient medical information; computer programs for editing images, sound and video; computer programs for user interface design; video monitors; video recorders; video transmission apparatus; voice display monitors; speed indicators; sound alarms; temperature sensors used in the medical field to measure temperature of medical solutions; wireless controller to monitor and control the functioning of other electronic

devices; wireless communication device featuring voice, data and image transmission including voice, text and picture messaging, a video and still image camera, also functional to purchase music, games, video and software applications over the air for downloading to the device; wireless transmitters and receivers; receivers of electronic signals; pedometers; battery chargers

Class 028. First Use: 0 First Use In Commerce: 0

All goods and services in the class are opposed, namely: Exercise equipment, consisting of a valve and mouthpiece, namely, for breathing exercises and strengthening the lungs, not for medical purposes; Accessory for manually-operated exercise equipment, namely, accessory attachment in the nature of a band worn around the waist to increase muscle resistance; Exercise equipment, namely, hand grippers for hand and forearm strengthening; Exercise equipment, namely, chest expanders

Class 038. First Use: 0 First Use In Commerce: 0

All goods and services in the class are opposed, namely: Providing online chat rooms and electronic bulletin boards for registered users for transmission of messages concerning health, fitness, nutrition, personal activities, general interest, and social networking; communication services, namely, transmission of voice, audio, visual images and data by telecommunications networks, wireless communication networks, the Internet, information services networks and data networks


Class 044. First Use: 0 First Use In Commerce: 0

All goods and services in the class are opposed, namely: Providing a website featuring information regarding nutrition, dieting, wellness, and health; home health care services, namely, physical therapy; home health care services; telemedicine services; counseling services in the fields of health, nutrition and lifestyle wellness; providing wellness services, namely, personal assessments, personalized routines, maintenance schedules, and counseling; provision of health care and medical services by health care professionals via the Internet or telecommunication networks


Grounds for Opposition


Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)

Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	2753896	Application Date	07/13/2001
Registration Date	08/19/2003	Foreign Priority Date	NONE
Word Mark	MEDICHOICE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 2002/02/01 First Use In Commerce: 2002/02/01 TOWELS, GAUZE AND DRESSINGS, ALL FOR MEDICAL USE Class 010. First use: First Use: 2002/02/01 First Use In Commerce: 2002/02/01 MASKS, PATIENT SLIPPERS, PILLOWS AND CRUTCHES, ALL FOR MEDICAL USE		

U.S. Registration No.	3283434	Application Date	12/26/2001
Registration Date	08/21/2007	Foreign Priority Date	NONE

Word Mark	MEDICHOICE
Design Mark	
Description of Mark	NONE
Goods/Services	<p>Class 003. First use: First Use: 2003/03/01 First Use In Commerce: 2003/03/01 HAND SOAP; MEDICAL AND SURGICAL PRODUCTS AND SUPPLIES, NAMELY, ALCOHOL BASED HAND CLEANING PREPARATIONS</p> <p>Class 008. First use: First Use: 2005/03/01 First Use In Commerce: 2005/03/01 RAZORS</p> <p>Class 009. First use: First Use: 2006/11/01 First Use In Commerce: 2006/11/01 MEDICAL AND SURGICAL PRODUCTS AND SUPPLIES NAMELY, MEDICAL SCALES</p> <p>Class 011. First use: First Use: 2005/11/01 First Use In Commerce: 2005/11/01 SITZ BATHS, DIAGNOSTIC LIGHT BULBS, PRODUCTS FOR MEDICAL USE, NAMELY, DIAGNOSTIC PEN LIGHTS</p> <p>Class 012. First use: First Use: 2004/09/13 First Use In Commerce: 2004/09/13 MEDICAL PRODUCTS AND SUPPLIES, NAMELY PRESSURE RELIEF WHEELCHAIR PADS, AND WHEELCHAIRS</p> <p>Class 020. First use: First Use: 2005/11/01 First Use In Commerce: 2005/11/01 PRODUCTS FOR MEDICAL USE, NAMELY, PILLOWS; MEDICAL AND SURGICAL PRODUCTS AND SUPPLIES, NAMELY, MEDICAL STOOLS AND STANDS FOR HAMPERS FOR MEDICAL REFUSE AND LINENS</p>

U.S. Registration No.	3462755	Application Date	12/26/2001
Registration Date	07/08/2008	Foreign Priority Date	NONE
Word Mark	MEDICHOICE		
Design Mark			
Description of Mark	NONE		

Goods/Services	<p>Class 005. First use: First Use: 2007/07/01 First Use In Commerce: 2007/07/01 GAUZE, ADULT DIAPERS, COTTON TIPPED APPLICATORS FOR MEDICAL USE; PRODUCTS FOR MEDICAL USE, NAMELY, ALCOHOL MOISTENED PREP PADS; MEDICAL AND SURGICAL PRODUCTS AND SUPPLIES, NAMELY, MEDICATED PRE-MOISTENED TOWELETTES, MEDICAL INSTRUMENT LENSANTI-FOG SOLUTIONS; ULTRASOUND TRANSMISSION GEL</p> <p>Class 010. First use: First Use: 2007/07/01 First Use In Commerce: 2007/07/01 PRODUCTS FOR MEDICAL USE, NAMELY, MASKSFOR USE BY MEDICAL PERSONNEL, CRUTCHES, ISOLATION GOWNS, SURGICAL SHOE COVERS, CUPS FOR DISPENSING MEDICINE, PLASTIC GRADUATED CONTAINERS FOR MEASURING BODY FLUIDS, URINALS, GLOVES, PAPER FOR USE ON EXAMINATION TABLES, EXAM PAPER PRODUCTS, NAMELY, PROFESSIONAL TOWELS AND EXAMINATION GLOVES AND EXAMINATION CAPES, CANES, INVALID WALKERS, EAR SYRINGES, ENEMA KITS, NAMELY, BOWEL CLEANING KITS CONSISTING OF ENEMA BOTTLES AND ENEMA BAGS; MULTI-POCKET PLASTIC BAGS FOR COUNTING SPONGES, MINOR MEDICAL PROCEDURE TRAYS, CHEMICALLY ACTIVATED HOT AND COLD PACKS FOR MEDICAL PURPOSES, ICE BAGS FOR MEDICAL USE, URINARY LEG BAGS, IRRIGATION SYRINGES, EGG CRATE FOAM BED PADS, INTRAVENOUS PRESSURE INFUSORS, ABDOMINAL BINDERS, BLOOD PRESSURE ANEROIDS, TELEMETRY POUCHES, PLASTIC RECLOSABLE BAGS FOR STORING MEDICAL SAMPLES, STETHOSCOPES, NASOPHARYNGEAL AIRWAYS, URETHRAL CATHETER KITS COMPRISING A URETHRAL CATHETER AND LUBRICANT AND CLEAN-UP TOWEL, SURGICAL BANDAGES, NAMELY, ESMARK BANDAGES; MEDICAL AND SURGICAL PRODUCTS AND SUPPLIES, NAMELY, ENEMA BAGS, MEDICAL AND SURGICAL PRODUCTS AND SUPPLIES, NAMELY, PATIENT LIMB HOLDERS, MEDICAL TUBING FOR USE AS TOURNIQUETS, SUCTION CATHETERS AND TRAYS, ELASTIC BANDAGES, SCALPELS, THERMOMETERS FOR MEDICAL PURPOSES, AMNIOTIC PERFORATORS, UMBILICAL CORD CLAMPS, NEWBORN INFANT FOOT PRINTERS, NAMELY, TRAYS WITH INK PADS, CATHETER LEG STRAPS, LANCETS, POST MORTEM KITS, NAMELY, SHEETS AND BAGS, FULL LINE OF STAINLESS STEEL HAND POWERED SURGICAL INSTRUMENTS, PATIENT EXAMINATION TABLES, INTRAVENOUS ROD HOLDERS, PATIENT TREATMENT TABLES, PATIENT RECLINING CHAIRS, COMMODE CHAIRS, BLOOD DRAWING CHAIRS, VAGINAL SPECULA, POST PARTUM PERINEAL PADS, BELTS FOR ATTACHING MEDICAL MONITORS TO PATIENTS, PATIENT POSITIONING AIDS, NAMELY, PADS FOR OPERATING TABLES, WOUND SUCTION APPARATUS, MEDICAL TUBING FOR SUCTION, MEDICAL TUBING FOR INSUFFLATION, STERILE SLEEVES FOR MEDICAL LIGHT HANDLES, BLOOD VESSEL LOOPS, SURGICAL STAPLE REMOVERS</p> <p>Class 016. First use: First Use: 2007/07/01 First Use In Commerce: 2007/07/01 SKIN MARKING PENS; PRODUCTS FOR MEDICAL USE, NAMELY, DISPOSABLE NON-WOVEN PAPER WASH CLOTHS; MEDICAL AND SURGICAL PRODUCTS AND SUPPLIES, NAMELY, MEDICAL IDENTIFICATION CARDS, PLASTIC BAGS FOR PATIENT BELONGINGS, FACIAL TISSUES, AND PAPER AND PLASTIC BEDSIDE DISPOSAL BAGS</p> <p>Class 024. First use: First Use: 2007/07/01 First Use In Commerce: 2007/07/01 PRODUCTS FOR MEDICAL USE, NAMELY, DISPOSABLE NON-WOVEN WASH CLOTHS OF SYNTHETIC MATERIAL; MEDICAL AND SURGICAL PRODUCTS AND SUPPLIES, NAMELY, PRESSURE RELIEF BED PADS</p> <p>Class 025. First use: First Use: 2007/07/01 First Use In Commerce: 2007/07/01 PRODUCTS FOR MEDICAL USE, NAMELY, DISPOSABLE SLIPPERS,</p>
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	HEADWEAR, PLASTIC DISPOSABLE BIBS, AND HEADGEAR, NAMELY, KNIT CAPS FOR INFANTS; MEDICAL AND SURGICAL PRODUCTS AND SUPPLIES, NAMELY, PLASTIC DISPOSABLE APRONS FOR MEDICAL USE
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/W&S/
Name	Virginia R. Richard
Date	11/06/2013

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

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OWENS & MINOR, INC.,	:	
	:	
	:	U.S. Trademark Application
	:	Serial No. 85/699,218
	:	Filed: August 9, 2012
Opposer,	:	Mark: ICHOICE (stylized/design)
v.	:	Int. Classes: 9, 28, 38, 44
	:	Published: July 9, 2013
BEIJING CHOICE ELECTRONIC TECHNOLOGY CO., LTD.,	:	
	:	
	:	
	:	
Applicant.	:	
	:	
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NOTICE OF OPPOSITION

Owens & Minor, Inc. (hereinafter, "Opposer" and/or "Owens & Minor"), a corporation organized and existing under the laws of the Commonwealth of Virginia, with a principal place of business at 9120 Lockwood Boulevard, Mechanicsville, Virginia 23116, believes that it will be damaged by the registration of U.S. Trademark Application Serial No. 85/699,218 for the mark ICHOICE (stylized/design) in International Classes 9, 28, 38 and 44 and hereby opposes same.

As grounds for opposition it is alleged that:

1. Opposer is a leading provider of medical supplies and equipment to hospitals, clinics and healthcare providers in the U.S. Opposer sells over 220,000 medical - surgical products to more than 4,500 health care providers across the United States. Opposer is the leading source of supply chain management services and supplies for healthcare providers in the United States.

2. In addition to the sale and distribution of third party medical – surgical products, Opposer, since at least as early as 2003, has offered a private label line of medical – surgical products under the name and mark MEDICHOICE®.

3. For a decade, Opposer has marketed and distributed its MEDICHOICE® brand medical – surgical products to healthcare facilities nationwide.

4. Opposer offers a wide range of high-quality cost-effective medical products and supplies under its MEDICHOICE mark including patient and staff apparel, patient-ready medical instruments, diagnostic equipment, pre-assembled sterilized kits for use in medical procedures as

well as bandages, dressings and related supplies used in emergency care centers, operating rooms, and medical treatment facilities of all kinds.

5. Opposer is the owner of the following federal registrations for its MEDICHOICE® name and mark:

MARK	REG. NO.	REG. DATE	RECITATION OF GOODS
MEDICHOICE	2,753,896	08/19/03	Towels, gauze and dressings, all for medical use, in Class 5; Masks, patient slippers, pillows and crutches, all for medical use, in Class 10
MEDICHOICE	3,283,434	8/21/07	Hand soap; medical and surgical products and supplies, namely, alcohol based hand cleaning preparations, in Class 3; Razors, in Class 8; Medical and surgical products and supplies namely, medical scales, in Class 9; Sitz baths, diagnostic light bulbs, products for medical use, namely, diagnostic pen lights, in Class 11 Medical products and supplies, namely pressure relief wheelchair pads, and wheelchairs, in Class 12; Products for medical use, namely, pillows; medical and surgical products and supplies, namely, medical stools and stands for hampers for medical refuse and linens, in Class 20
MEDICHOICE	3,462,755	07/08/08	Gauze, adult diapers, cotton tipped applicators for medical use; products for medical use, namely, alcohol moistened prep pads; medical and surgical products and supplies, namely, medicated pre-moistened towelettes, medical instrument lens anti-fog solutions; ultrasound transmission gel, in Class 5; Products for medical use, namely, masks for use by medical personnel, crutches, isolation gowns, surgical shoe covers, cups for dispensing

MARK	REG. NO.	REG. DATE	RECITATION OF GOODS
			<p>medicine, plastic graduated containers for measuring body fluids, urinals, gloves, paper for use on examination tables, exam paper products, namely, professional towels and examination gloves and examination capes, canes, invalid walkers, ear syringes, enema kits, namely, bowel cleaning kits consisting of enema bottles and enema bags; multi-pocket plastic bags for counting sponges, minor medical procedure trays, chemically activated hot and cold packs for medical purposes, ice bags for medical use, urinary leg bags, irrigation syringes, egg crate foam bed pads, intravenous pressure infusors, abdominal binders, blood pressure aneroids, telemetry pouches, plastic reclosable bags for storing medical samples, stethoscopes, nasopharyngeal airways, urethral catheter kits comprising a urethral catheter and lubricant and clean-up towel, surgical bandages, namely, esmark bandages; medical and surgical products and supplies, namely, enema bags, medical and surgical products and supplies, namely, patient limb holders, medical tubing for use as tourniquets, suction catheters and trays, elastic bandages, scalpels, thermometers for medical purposes, amniotic perforators, umbilical cord clamps, newborn infant foot printers, namely, trays with ink pads, catheter leg straps, lancets, post mortem kits, namely, sheets and bags, full line of stainless steel hand powered surgical instruments, patient examination tables, intravenous rod holders, patient treatment tables, patient reclining chairs, commode chairs, blood drawing chairs, vaginal specula, post partum perineal pads, belts for attaching medical monitors to patients, patient positioning aids, namely, pads for operating tables, wound suction apparatus, medical tubing for suction, medical tubing for insufflation, sterile sleeves for medical light handles, blood vessel loops, surgical staple removers, in Class 10;</p> <p>Skin marking pens; products for medical use, namely, disposable non-woven paper washcloths;</p>

MARK	REG. NO.	REG. DATE	RECITATION OF GOODS
			<p>medical and surgical products and supplies, namely, medical identification cards, plastic bags for patient belongings, facial tissues, and paper and plastic bedside disposal bags, in Class 16;</p> <p>Products for medical use, namely, disposable non-woven washcloths of synthetic material; medical and surgical products and supplies, namely, pressure relief bed pads, in Class 24;</p> <p>Products for medical use, namely, disposable slippers, headwear, plastic disposable bibs, and headgear, namely, knit caps for infants; medical and surgical products and supplies, namely, plastic disposable aprons for medical use, in Class 25</p>

The foregoing registrations are valid, subsisting, uncanceled and unrevoked. Owens & Minor's U.S. Registration Nos. 2,753,896 and 3,283,434 are incontestable pursuant to 15 U.S.C. § 1065. Opposer intends to rely on the above registrations in this proceeding and, accordingly, will order certified copies of the registrations showing both the current status of and current title to the registrations, pursuant to the provisions of 37 C.F.R. § 2.122(d)(2).

6. As a result of Opposer's decade-long use, extensive distribution and sales of MEDICHOICE medical and healthcare products and supplies, Opposer's MEDICHOICE® name and mark is well-known and recognized by providers of healthcare services and identifies high-quality, cost-effective medical and healthcare products originating with Opposer.

7. On August 9, 2012, Applicant, Beijing Choice Electronic Technology Co., Ltd. ("Applicant") filed U.S. Trademark Application Serial No. 85/699,218 for the mark ICHOICE (stylized/design) on an intent-to-use basis for:

- a. Multifunctional electronic devices not for medical use, namely, devices incorporating microprocessors, digital displays, and accelerometers for displaying, measuring, and uploading information to the Internet regarding time, date, body and heart rates, global positioning, speed, steps taken, calories burned, and navigational information for purposes of tracking physical exercise and geographic location; fitness equipment, namely, scales and personal weighing scales; Computer software for wireless data communication for receiving, processing, transmitting and displaying information relating to fitness, body fat, body mass index, blood oxygen saturation, blood pressure, heart rate, electrocardiographic data, and body temperature; computer software for managing information regarding tracking, compliance and motivation with a health and fitness program; computer hardware and software system for tracking people,

objects and pets using GPS data on a device on the tracked people, objects and pets; computer hardware and software, for use with medical patient monitoring equipment, for receiving, processing, transmitting and displaying data; computer software for controlling and managing patient medical information; computer programs for editing images, sound and video; computer programs for user interface design; video monitors; video recorders; video transmission apparatus; voice display monitors; speed indicators; sound alarms; temperature sensors used in the medical field to measure temperature of medical solutions; wireless controller to monitor and control the functioning of other electronic devices; wireless communication device featuring voice, data and image transmission including voice, text and picture messaging, a video and still image camera, also functional to purchase music, games, video and software applications over the air for downloading to the device; wireless transmitters and receivers; receivers of electronic signals; pedometers; battery chargers, in Class 9

- b. Exercise equipment, consisting of a valve and mouthpiece, namely, for breathing exercises and strengthening the lungs, not for medical purposes; Accessory for manually-operated exercise equipment, namely, accessory attachment in the nature of a band worn around the waist to increase muscle resistance; Exercise equipment, namely, hand grippers for hand and forearm strengthening; Exercise equipment, namely, chest expanders, in Class 28
- c. Providing online chat rooms and electronic bulletin boards for registered users for transmission of messages concerning health, fitness, nutrition, personal activities, general interest, and social networking; communication services, namely, transmission of voice, audio, visual images and data by telecommunications networks, wireless communication networks, the Internet, information services networks and data networks, in Class 38
- d. Providing a website featuring information regarding nutrition, dieting, wellness, and health; home health care services, namely, physical therapy; home health care services; telemedicine services; counseling services in the fields of health, nutrition and lifestyle wellness; providing wellness services, namely, personal assessments, personalized routines, maintenance schedules, and counseling; provision of health care and medical services by health care professionals via the Internet or telecommunication networks, in Class 44

8. Applicant's ICHOICE mark is virtually identical to Opposer's MEDICHOICE® mark and is dominated by and encompasses Opposer's MEDICHOICE® mark virtually in its entirety.

9. The medical and healthcare goods and services, including but not limited to diagnostic equipment used to gather and monitor medical patient vital signs, temperature sensors used in the medical field, and other products for managing patient medical information, which Applicant intends to offer under its ICHOICE mark are identical and/or closely related to the medical and healthcare products sold by Opposer over the past decade under the mark MEDICHOICE®.

10. Opposer commenced use of its MEDICHOICE® mark a decade prior to the August 9, 2012 date of filing of the subject intent-to-use Application Serial No. 85/699,218 for the mark ICHOICE filed by Applicant.

11. Applicant's prospective use and registration of the mark ICHOICE in connection with the recited goods and services is likely to cause confusion with the mark MEDICHOICE®, as used by Opposer in connection with the sale and distribution of healthcare and medical products to members of the healthcare industry.

12. Applicant's prospective use and prospective registration of the mark ICHOICE in connection with the goods and services identified in U.S. Application Serial No. 85/699,218 in classes 9, 28, 38 and 44 is likely to cause confusion with Opposer's MEDICHOICE® name and mark, as it falsely implies to the trade and the public that Applicant and its products are the same as or related and/or associated with Opposer and its well-known MEDICHOICE® branded healthcare and medical products or that Applicant's healthcare and medical goods and services are somehow sponsored by Opposer.

13. Opposer believes and alleges that Applicant's mark, when applied to the goods and services in Classes 9, 28, 38 and 44 set forth in Application Serial No. 85/699,218, is likely to cause confusion or mistake, or to deceive, and will deceive and mislead the trade and purchasing public into believing that Applicant is licensed or controlled by Opposer, or that Applicant is a division or a subsidiary of, or in some way related to Opposer, or that Applicant's goods and services are sponsored, licensed, approved or endorsed by Opposer.

14. Any problems or complaints concerning Applicant's goods and services offered under the mark ICHOICE are likely to reflect adversely upon Opposer and are likely to seriously injure the reputation and goodwill of Opposer's well-known MEDICHOICE® name and mark as used by Opposer in connection with the sale and distribution of a wide range of high-quality products used in the healthcare field.

15. Opposer further believes and alleges that Applicant's mark, when applied to the goods and services identified in U.S. Trademark Application Serial No. 85/699,218, is likely to dilute the distinctive quality of Opposer's MEDICHOICE® mark.

16. By reason of the foregoing facts, Opposer will be damaged by the registration of Applicant's confusingly similar and diluting ICHOICE mark for the goods and services identified in U.S. Trademark Application Serial No. 85/699,218.

WHEREFORE, Opposer prays that this Opposition be sustained and Applicant's mark be denied registration in International Classes 9, 28, 38 and 44.

Dated: New York, New York
November 6, 2013

By:


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Lana C. Marina, Esq.

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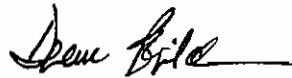
(212) 294-6700

**Attorneys for Opposer
OWENS & MINOR, INC.**

CERTIFICATE OF SERVICE

I hereby certify that on November 6, 2013, a true and correct copy of the foregoing Notice of Opposition was duly served on counsel for Applicant, by first class mail, to the address below:

David I. Greenbaum, Esq.
EDWARDS WILDMAN PALMER LLP
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New York, New York 10150-0130



Denise Bolden